

# **EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

**IN RE: DMCA SUBPOENA TO  
NAMECHEAP, INC.**

: **CIVIL ACTION NO. 1:18-mc-0071**  
:  
: **JUDGE CHRISTOPHER A. BOYKO**  
:  
:  
: **DECLARATION OF MATTHEW**  
: **RUSSELL**  
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I, Matthew Russell, declare as follows:

1. I am the Chief Cloud Officer at Namecheap, Inc. ("Namecheap"). I have personal knowledge of the facts set forth in this declaration and if called upon to testify under oath, I could and would testify competently thereto.

2. I submit this declaration in support of Namecheap and its counsel Jennifer Suarez, Eugene Rome, and Sridavi Ganesan's Opposition to Aaron Greenspan's Motion for Contempt Sanctions.

3. I have worked at Namecheap since 2006, first as the Vice President of web hosting services, and as its Chief Cloud Officer since 2014. As part of my initial duties, I founded and was responsible for the creation of all of the web hosting services that Namecheap offers today. My duties today include strategic oversight of our web hosting and cloud offerings, identifying industry trends/opportunities, supporting our product managers and building capabilities to engage in these opportunities and ensuring these tie in with our overall business

model. I am widely considered an expert in web hosting services and consumer cloud hosting services.

4. On August 17, 2018, I reviewed the subpoena served by Aaron Greenspan to Namecheap at issue in the above-referenced action (“Subpoena”), and his email dated August 17, 2018 demanding that Namecheap reset the root password(s) to the server(s) dedicated and managed by the website operator(s) for the domain(s) listed in Exhibit A of the subpoena.

5. While there is a way for a customer to change its own root password, this can only easily be done when the customer knows the password it wants to change. Given that the server(s) at issue is/are password protected, and Namecheap does not have access to the password(s), what Mr. Greenspan is demanding of Namecheap amounts to hacking into its customer(s) server(s) to obtain the information sought in the Subpoena.

6. Namecheap’s Web Hosting Terms of Service, which Namecheap is bound by with each of its web hosting service customers, does not allow for Namecheap to change a customer’s password without his/her permission. A true and correct copy of this Terms of Use is attached hereto and incorporated herein by reference as Exhibit “1”. This Terms of Use is also publicly available on the internet at <https://www.namecheap.com/legal/hosting/tos.aspx>.

7. The process for Namecheap to reset the password(s) is extreme and the outcome may compromise service features of the server(s). I do not know of any web hosting service that would resort to such action. In my tenure at Namecheap, we have never been requested to perform such an act by a private litigant or a court of law.

8. The root password is the key to the entire server. Namecheap provides a dedicated server to its customers for them to manage and password protect. To reset the password, Namecheap would have to turn the server off to the internet, boot it into local user mode, and set

its own password. This would lock the customer out of the server and alert him or her of the password change.

9. Performing the above actions would also cause serious service implications for the software and other services on the server, such as causing the server to crash.

10. If Mr. Greenspan wants the information described in the Subpoena, he can more easily obtain that information directly from the website operator(s) or, certainly, directly from the end user.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 24, 2018 in London, United Kingdom.

  
\_\_\_\_\_  
Matthew Russell



# **EXHIBIT A**

[SUPPORT](#)[SIGN IN](#)[SIGN UP](#)

## Legal

Everything you must know in one place

**Legal** → **Hosting** → **Hosting Terms of Service**

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### Web Hosting - Terms of Service (TOS)

These Terms of Service (the "Agreement") set forth the terms and conditions of Your Use of hosting and related services ("Services"). In this Agreement "You" and "Your" refer to You as the user of Our Services, or any agent, employee, servant or person authorized to act on Your behalf. "We", "us" and "our" refer to Namecheap, Inc., as well as its subsidiaries and sister companies ("Namecheap"). This Agreement explains Our obligations to You, and explains Your obligations to Us for the various services or products offered by Namecheap ("Services"). When You use Your account or permit someone else to use it to purchase or otherwise acquire access to additional Services or to cancel Your Services (even if We were not notified of such authorization), You signify Your agreement to the terms and conditions contained in this Agreement.

#### 1. Term of Agreement; Modification

You agree that Namecheap may modify this Agreement and the Services it offers to You from time to time. You agree to be bound by any changes Namecheap may reasonably make to this Agreement when such changes are made. If You have purchased Services from Namecheap, the terms and conditions of this Agreement shall continue in full force and effect as long as You take advantage of and use the Services. By continuing to use the Services after any revision to this Agreement or change in services, you agree to abide by and be bound by any such revisions or changes.

## 2. Accurate Information

You agree to maintain accurate information by providing updates to Namecheap, as needed, while You are using the Services. You agree You will notify Namecheap within five (5) business days when any change of the information You provided as part of the application and/or registration process changes. Failure by You, for whatever reason, to respond within five (5) business days to any inquiries made by Namecheap to determine the validity of information provided by You will constitute a material breach of this Agreement. If You provide any information that is inaccurate, not current, false, misleading or incomplete, or if Namecheap has reasonable grounds to suspect that Your information is inaccurate, not current, false, misleading or incomplete, Namecheap has the absolute right, in its sole discretion, to terminate its Services and close Your account.

## 3. Privacy

Namecheap's Privacy Policy, which is incorporated herein by reference, is applicable to all Services. The Privacy Policy sets out Your rights and Namecheap's responsibilities with regard to Your personal information. Namecheap will not use Your information in any way inconsistent with the purposes and limitations provided in the Privacy Policy. You agree that Namecheap, in its sole discretion, may modify the Privacy Policy, and You further agree that, by using the Services after such modifications become effective, You have agreed to these modifications. You acknowledge that if you do not agree to any such modification, you may terminate this Agreement. Namecheap will not refund any fees paid by You if You terminate your Agreement under this provision. You represent and warrant that You have provided notice to, and obtained consent from, any third party individuals whose personal data You supply to Namecheap as part of the Services with regard to: (i) the purposes for which such third party's personal data has been collected; (ii) the intended recipients or categories of recipients of the third party's personal data; (iii) which parts of the third party's data are obligatory and which parts, if any, are voluntary; and (iv) how the third party can access and, if necessary, rectify the data held about them. You further agree to provide such notice and obtain such consent with regard to any third party personal data You supply to Namecheap in the future. Namecheap is not responsible for any consequences resulting from Your failure to provide notice or receive consent from such individuals nor for Your providing outdated, incomplete or inaccurate data.

## 4. Accepted Use Policy

Namecheap's Accepted Use Policy ("AUP"), which is incorporated herein by reference, is applicable to all Services. You should use all Services for lawful purposes only. You agree to maintain Your website in full compliance with the terms and conditions set forth in the AUP. By using any Services, You agree:



- not to violate the laws, regulations, ordinances or other such requirements of any applicable Federal, State or local government.
- not to transmit any unsolicited commercial or bulk email, not to be engaged in any activity known or considered to be spamming or Mail Bombing.
- not to make any illegal communication to any Newsgroup, Mailing List, Chat Facility, or another Internet Forum.
- not to make, attempt or allow any unauthorized access to Namecheap website, servers, your own hosting account or the account of any other customers of Namecheap.
- not to allow any remote code execution of malicious software through the hosting account provided by Namecheap.
- not to cause denial of service attacks, port scans or other endangering and invasive procedures against Namecheap servers and facilities or the servers and facilities of other network hosts or Internet users.
- not to forge the signature or other identifying mark or code of any other person or engage in any activity to attempt to deceive other persons regarding the true identity of the User.
- not to use Namecheap services to host any website, other content, links or advertisements of websites that: infringe any copyright, trademark, patent, trade secret, or other proprietary rights of any third party information; contain nudity, pornography or other content deemed adult related; profess hatred for particular social, ethnical, religious or other group; contain viruses, Trojan horses, worms, time bombs, corrupted files, or any other similar software or programs that may damage the operation of a computer or a person's property; contain warez; contain any kind of proxy server or other traffic relaying programs; promote money making schemes, multi-level marketing or similar activities; contain lottery, gambling, casino; contain torrent trackers, torrent Portals or similar software; violent or encouraging violence.
- not to upload unacceptable material which includes: IRC bots, warez, image, file storage, mirror, or banner-ad services, topsites, streaming, Escrow, High-Yield Interest Programs (HYIP) or related sites, investment sites (FOREX, E-Gold Exchange, etc), bitcoin miners, sale of any controlled substances without providing proof of appropriate permit(s) in advance, AutoSurf sites, Bank Debentures, Bank Debenture Trading Programs, Prime Banks Programs, lottery sites, muds / rpg's, hate sites, hacking focused sites/archives/programs, or sites promoting illegal activities, IP Scanners, Brute Force Programs, Mail Bombers and Spam Scripts.
- not to engage in or to instigate actions that cause harm to Namecheap or other customers. Such actions include, but are not limited to, actions resulting in blacklisting any of Our IPs by the any online spam database, actions resulting in DDOS attacks for any servers, etc. Namecheap reserves the right to refuse service to anyone upon Our discretion. Any material that in Namecheap judgment, is either obscene or threatening is strictly prohibited and will be removed from Namecheap servers immediately with or without prior notice and may lead to possible warning, suspension or immediate account termination with no refund. You agree that We have the sole right to decide what constitutes a violation of the acceptable policy use

described above as well as what is the appropriate severity of any corrective action to be applied. In the event that a violation of Our Acceptable Use Policy is found, Namecheap will take corrective action upon our own discretion and will notify You. Namecheap decision in such case is binding and final, and cannot be a subject of a further change. Namecheap cannot and shall not be liable for any loss or damage arising from Our measures against actions causing harm to Namecheap or any other third party. We have the right to terminate each and any hosting account that has been suspended for any reason for more than 14 calendar days after the suspension date, unless You has taken corrective measures to remove the initial suspension threat or violation. Any backup copies of the hosting account will be permanently deleted upon termination and no refund will be due. Namecheap will not be liable for any loss or damages in such cases.

- not to violate the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 or similar legislation, or promote, encourage or engage in the sale or distribution of prescription medication without a valid prescription.

At its discretion, Namecheap can remove any content we determine to be prohibited by this agreement or our Terms and Conditions. No backups will be kept of removed content.

For more information on the Accepted Use Policy for Virtual hosting accounts, VPS hosting accounts and Dedicated Servers please consult Our [Acceptable Use Policy](#).

## 5. Storage and Security

At all times, You shall bear full risk of loss and damage to Your server and all of Your server content. You are entirely responsible for maintaining the confidentiality of Your password and account information. You acknowledge and agree that You are solely responsible for all acts, omissions and use under and charges incurred with Your account or password or in connection with the server or any of Your server content displayed, linked, transmitted through or stored on the server. You shall be solely responsible for undertaking measures to: (i) prevent any loss or damage to Your server content; (ii) maintain independent archival and backup copies of Your server content; (iii) ensure the security, confidentiality and integrity of Your server content transmitted through or stored on Namecheap servers; and (iv) ensure the confidentiality of Your password. Namecheap services are not intended to be used for data backup or archiving purposes. Using an account as an online storage space for archiving electronic files is prohibited and will result in termination of hosting services without prior notice. We reserve the right to delete Your archives if they affect Our overall server performance and Namecheap shall have no liability to You or any other person for loss, damage or destruction of any of Your content. The services offered by Namecheap are not intended to provide a PCI (Payment Card Industry) compliant environment and therefore should not be utilized as such without further compliance



activity. Namecheap shall have no liability to You or any other person for Your use of Namecheap products and/or services in violation of these terms.

## 6. Ownership

Except as otherwise set forth herein, all right, title and interest in and to all, (i) registered and unregistered trademarks, service marks and logos; (ii) patents, patent applications, and patentable ideas, inventions, and/or improvements; (iii) trade secrets, proprietary information, and know-how; (iv) all divisions, continuations, reissues, renewals, and extensions thereof now existing or hereafter filed, issued, or acquired; (v) registered and unregistered copyrights including, without limitation, any forms, images, audiovisual displays, text, software and (vi) all other intellectual property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Services identified herein ("IP rights") are owned by Namecheap or its licensors, and you agree to make no claim of interest in or ownership of any such IP rights. You acknowledge that no title to the IP rights is transferred to you, and that You do not obtain any rights, express or implied, in the Services, other than the rights expressly granted in this Agreement. To the extent that you create any Derivative Work (any work that is based upon one or more preexisting versions of a work provided to you, such as an enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted) such Derivative Work shall be owned by Namecheap and all right, title and interest in and to each such Derivative Work shall automatically vest in Namecheap. Namecheap shall have no obligation to grant You any right in any such Derivative Work.

## 7. Non-Exclusive License

If You have licensed software from Namecheap, Namecheap grants You a limited, non-exclusive, nontransferable and non-assignable license to use the software for such purposes as are ordinary and customary. You are free to use the software on any computer, but not on two or more computers at one time. You agree to not alter or modify the software. You agree You are not authorized to combine the software with any other software program, create derivative works based upon the software, nor are You authorized to integrate any plug-in or enhancement which uses or relies upon the software. You further agree not to reverse engineer, decompile or otherwise attempt to uncover the source code. Namecheap reserves all rights to the software. The software and any copies You are authorized to make are the intellectual property of Namecheap. The source code and its organization are the exclusive property of Namecheap and the software is protected by copyright law. Except as expressly provided for in this section, this Agreement does not grant You any rights in the software and all rights are reserved by Namecheap.

Any such software and Services are provided to You "as is" without warranty of any kind either express or implied, including but not limited to the implied warranties or conditions of merchantability or fitness for a particular purpose.

## 8. Third-Party Software

Namecheap provides some third-party software to You for easier account management including, but is not limited to cPanel, etc. Such software is provided on an "as is" as available basis. We do not guarantee that any specific results can be obtained by using such software. Namecheap does not take responsibility for any faults in such software functioning. You agree that Your use of any Namecheap Services shall be used by You in accordance with the terms of any relevant third-party licenses. Your failure to abide by any third-party license may result in the immediate termination of Your Services by Namecheap.

You can add and use third-party software on Your account only if it is compatible with Our servers and is approved by Namecheap. Your use of any third party software is at Your own risk. Namecheap does not control and therefore cannot be responsible for any third party software performance and provides no guarantees that its use will result in any particular outcome or result. Namecheap will have no liability or responsibility for any damage, loss of data, loss of use or other loss occurring in connection with Your use of third party software or products. Namecheap reserves the right, at its sole discretion, to terminate, suspend, cancel or alter Your access to third-party software at any time.

You are solely responsible for any license and other fees required by the software providers, for using any third-party software installed on Your account apart from the initial account setup.

## 9. Third-Party Content

If You elect to sell or resell advertising or web space to a third party then You will be responsible for the contents of that advertising and the actions of that third party. Namecheap has the absolute right to reject any advertising or other third party content that is illegal, offensive or otherwise in breach of the then current Namecheap policy or agreement. Such content may result in the suspension or in the immediate termination of Your account. You are responsible for monitoring all service renewals and orders. In the event that an error occurs the account holder must notify Namecheap immediately of the error. In no event shall Namecheap be liable to the Account Holder for any damages resulting from or related to any failure or delay of domain registration, transfer or renewal.

## 10. Billing and Payment



All fees for the Services shall be in accordance with Namecheap 's fee schedule then in effect, the terms of which are incorporated herein by reference, and shall be due at the times provided therein. Fees for renewal periods after the Initial Term shall be due and owing immediately upon the first day of such renewal period. Namecheap may impose a debt service charge equal to one and one-half percent (1.5%) of the overdue balance for each month or fraction thereof the overdue amount remains unpaid. In addition, in the event that any amount due Namecheap remains unpaid seven (7) days after such payment is due for shared hosting packages and three (3) days for VPS and dedicated servers, Namecheap, in its sole discretion, may immediately terminate this agreement, and/or withhold or suspend Services. There will be a \$15.00 fee to reinstate accounts that have been suspended or terminated. All taxes, fees and governmental charges relating to the Services provided hereunder shall be paid by You.

If You signed up for a monthly payment plan, Your monthly billing date will be determined based on the day of the month You purchased the products or Services. If You signed up for an annual (or longer) payment plan, and You elected the automatic renewal option, Namecheap will automatically renew Your Services when they come up for renewal and will take payment in accordance with the designated payment method at Namecheap 's then current rates.

If you improperly charge back for web hosting services rendered, we may disable the ability to transfer any other your Namecheap services away from Namecheap.

## 11. Termination & Cancellation Policy

The initial term of Your agreement with Namecheap shall be as set forth in Your Order Form. The Initial Term shall begin upon commencement of the Services in the Order Form. After the Initial Term, your agreement with Namecheap shall automatically renew for successive terms of equal length as the Initial Term, unless terminated or cancelled by either party as provided in this section.

This agreement may be terminated: (i) by You by submitting a helpdesk ticket under Billing Issues category at least three (3) working days before the account is due to renew; or (ii) by Namecheap at any time, without prior notice, if, in Namecheap 's judgment, You are in violation of any terms or conditions herein; or (iii) in Namecheap 's sole judgment, Your use of the Services places or is likely to place unreasonable demands upon Namecheap or could disrupt Namecheap 's business operations; or (iv) by Namecheap if it so determines that You are or are alleged to be violating the terms and conditions of any other agreement entered into by You and either Namecheap or Namecheap.

In the event of termination or suspension of Services under the above circumstances, You agree (a) that no pre-paid fees will be refunded to You; and (b) that Namecheap may take control of



any domain name associated with the terminated Services, provided such domain name was registered through the domain name registration of Namecheap.

You may receive a refund if: (i) Your shared hosting account is cancelled within the initial 14 days after sign up; (ii) Your Stellar, Stellar Plus or Stellar Business account is cancelled within the initial 30 days after sign-up. Only first-time Stellar, Stellar Plus or Stellar Business accounts are eligible for the 30-day money-back guarantee. If the account holder cancels after the time period specified, there will be no refund given. Refunds do NOT apply to dedicated servers, dedicated IP addresses, SSL certificates, renewals, any licenses (WHMCS, cPanel, Windows, etc.) that are not included into the package and are purchased at additional fee, domain registration related fees.

In the event of termination of this Agreement caused by your default hereunder, you shall bear all costs of termination, including any reasonable costs Namecheap incurs in closing your account. You agree to pay any and all costs incurred by Namecheap in enforcing your compliance with this Section. Upon termination, you shall destroy any copy of the materials licensed to you hereunder and referenced herein. You agree that upon termination or discontinuance for any reason, Namecheap may delete all information related to you on the Services.

## 12. Customer Support

Namecheap provides customer support to You at no additional fee for issues related to Namecheap service only. Namecheap has the right to decide what is a service related issue and to charge additional fees or refuse support for non-service related issues. Any fees paid by You for providing non-service related support are non-refundable.

You can request customer support only by opening Live Chat or Ticket through the HelpDesk system located in the Customer area. Namecheap will have no liability to provide customer support if it is requested in any other way apart from the HelpDesk system. You are solely responsible to use the appropriate HelpDesk category when opening Live Chat or posting Ticket. Namecheap will have no liability to respond to tickets opened in inappropriate categories. Namecheap shall not be liable for any delay in Live Chat and/or Ticket opened in inappropriate categories. You acknowledge that by asking our customer support representatives for assistance, You authorize their intervention and operation in Your account.

You must provide Namecheap with all information and access to facilities that Namecheap may reasonably require to provide the requested customer support.

You are solely liable for performing and storing a back-up copy of your data, files and hosting account prior to requesting customer support and agreeing to any interference or operation, provided by Namecheap. In the event You are not satisfied with the outcome of any action You shall be solely responsible for restoring the back-up copies of Your data. You should not abuse the HelpDesk system. Abuse of the HelpDesk system includes, but is not limited to, excessive number of Live Chats and Tickets opened by a single Customer, aggressive and/or harassing behavior, repetitive use of inappropriate categories for opening Live Chats, posting Tickets, etc. Any abuse of the HelpDesk system may result in warning, HelpDesk access restrictions, account suspension or possible account termination with no refund. Namecheap has the sole right to decide what constitutes abuse of the HelpDesk system.

### 13. Legal Purposes

The web hosting and reseller hosting account and/or related electronic services can only be used for legal purposes under all applicable international, federal, provincial, and municipal laws. The intent of Namecheap is to provide space to serve web documents, not as an off-site storage area for electronic files and is governed by the AUP. Violations of the AUP or any other provisions of this Agreement may result in termination of the Services provided by Namecheap, with or without the grant of a notice or cure period, such notice or cure period to be granted at the sole discretion of Namecheap based upon the severity of the violation. Namecheap reserves the right to refuse Service if any of the content within, or any links from, the Your website is deemed illegal, misleading, or obscene, or is otherwise in breach of Namecheap 's AUP, in the sole and absolute opinion of Namecheap. You agree that Namecheap shall not be liable to you for loss or damages that may result from its refusal to host your website or provided the Services under this Agreement.

### 14. Account Use

You agree to follow generally accepted rules of "Netiquette" when sending e-mail messages or posting to newsgroups. You are responsible for security of Your password. Namecheap will not change passwords to any account without proof of identification, which is satisfactory to Namecheap, which may include written authorization with signature. In the event of any partnership break-up, divorce or other legal problems that includes You, You understand that Namecheap will remain neutral and may put the account on hold until the situation has been resolved. Under no circumstances will Namecheap be liable for any losses incurred by You during this time of determination of ownership, or otherwise. You agree to defend (through counsel of Our choosing), indemnify and hold harmless Namecheap from any and all claims arising from such ownership disputes. If you are required to supply or transmit sensitive information to Namecheap you should take all due precautions to provide any sensitive information over a secure communication channel.



## 15. Currency

While all purchases are processed in US dollars, Namecheap may provide an estimated conversion price to currencies other than US dollars. You acknowledge and agree that the pricing displayed during the checkout process is an estimate. Due to potential slight time delays between actual purchase and the payment settlement, the actual price charged may fluctuate. Accordingly, Namecheap makes no representations or warranties that the actual price will be the same or substantially similar to the actual price You will pay and You waive any and all claims based upon any discrepancy between the estimate and the actual price. In addition, You may be charged VAT, based on the country indicated in Your billing address section. Any amounts to be charged will appear during the checkout process.

## 16. Limitation of Liability; Waiver and Release

The Services offered by Namecheap are being provided on an "AS IS" and Namecheap expressly disclaims any and all warranties, whether express or implied, including without limitation any implied warranties of merchantability or fitness for a particular purpose and non-infringement, to the fullest extent permitted or authorized by law. Without limitation of the foregoing, Namecheap expressly does not warrant that the Namecheap Services will meet Your requirements, function as intended, or that the use of the provided Services will be uninterrupted or error free. You understand and agree that any material and/or data downloaded or otherwise obtained through the use of the Services is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data. No advice or information, whether oral or written, obtained by you from Namecheap shall create any warranty not expressly made herein. You agree that Namecheap will not be liable for any (i) suspension or loss of the Services, except to the limited extent that a remedy is provided under this Agreement; (ii) interruption of business; (iii) access delays or access interruptions to the website(s) provided through or by the Services; (iv) loss or liability resulting from acts of god; (v) data non-delivery, mis-delivery, corruption, destruction or other modification; (vi) events beyond the control of Namecheap; (vii) the processing of Your application for Services; or (viii) loss or liability resulting from the unauthorized use or misuse of Your account identifier or password.

In no event shall Namecheap be liable for any or all direct, indirect, incidental, special, exemplary or consequential damages (including, but not limited to, procurement of substitute goods or services; loss of use, data, or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including, but not limited to, negligence or otherwise) arising in any way out of the use of the Services, even if Namecheap is aware of or has been advised of the possibility of such damages.

8/24/2018

Namecheap.com - Hosting - Terms of Service

In addition, You specifically acknowledge and agree that any cause of action arising out of or related to Namecheap or the Services provided by Namecheap must be commenced within one (1) year after the cause of action accrues, otherwise such cause of action shall be permanently barred.

In addition, You specifically acknowledge and agree that in no event shall Namecheap's total aggregate liability exceed the total amount paid by You for the particular Services that are the subject of the cause of action.

The foregoing limitations shall apply to the fullest extent permitted by law, and shall survive any termination or expiration of these Terms of Service or Your use of Namecheap or its Services offered.

No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by an authorized representative of Namecheap.

## 17. Indemnification

Accordingly, You for Yourself and all of Your heirs, personal representatives, predecessors, successors and assigns, hereby fully release, remise, and forever discharge Namecheap and all affiliates of Namecheap, and all officers, agents, employees, and representatives of Namecheap, and all of their heirs, personal representatives, predecessors, successors and assigns, for, from and against any and all claims, liens, demands, causes of action, controversies, offsets, obligations, losses, damages and liabilities of every kind and character whatsoever, including, but not limited to, any action omission, misrepresentation or other basis of liability founded either in tort or contract and the duties arising thereunder, whether known or unknown, relating to or arising out of, or in any way connected with or resulting from, the Services and Your acquisition and use thereof, including, but not limited to, the provision of the Namecheap products and/or services by Namecheap and its agents and employees. Further, You agree to defend, indemnify and hold harmless Namecheap and any of its contractors, agents, employees, officers, directors, shareholders, affiliates and assigns from any loss, liability, damages or expense, including reasonable attorneys' fees, arising out of (i) any breach of any representation or warranty provided in this Agreement, or as provided by Namecheap's AUP or any other agreement that has been incorporated by reference herein; (ii) the Services or your use of the Services, including without limitation infringement or dilution by You or by another using the Services from Your computer; (iii) any intellectual property or other proprietary right of any person or entity; (iv) any information or data You supplied to Namecheap, including, without limitation, any misrepresentation in Your application, if applicable; (v) the inclusion of metatags or other elements in any website created for you or by you via the Services; (vi) any information, material, or services available on your licensed Namecheap website; or (vii), any negligence or willful



misconduct by You, or any allegation that Your account infringes a third person's copyright, trademark or proprietary or intellectual property right, or misappropriates a third person's trade secrets.

This indemnification is in addition to any indemnification required of You elsewhere. Should Namecheap be notified of a pending law suit, or receive notice of the filing of a law suit, Namecheap may seek a written confirmation from You concerning Your obligation to defend, indemnify Namecheap. Such written confirmation may include the posting of performance bonds or other guarantees. Your failure to provide such a confirmation may be considered a breach of this agreement. You agree that Namecheap shall have the right to participate in the defense of any such claim through counsel of its own choosing. You agree to notify Namecheap of any such claim promptly in writing and to allow Namecheap to control the proceedings. You agree to cooperate fully with Namecheap during such proceedings. The terms of this section will survive any termination or cancellation of this Agreement.

## 18. Trademark or Copyright Claims

Namecheap is a service provider and respects the copyrights and other intellectual property rights of others [and herein incorporates its Copyright Infringement Policy]. To the extent Namecheap receives a proper notice of infringement of copyright, trademark or other intellectual property, Namecheap reserves the right to access, preserve and disclose to third parties any of Your information or data (including personally identifiable information and private communications) related to a written complaint of infringement if Namecheap believes in its sole discretion that such access, preservation, or disclosure is necessary or useful to respond to or otherwise address such complaint.

Namecheap expressly reserves the right to terminate in appropriate circumstances an account or the access rights of a subscriber for repeated copyright infringement. Namecheap also reserve the right to terminate an account or subscriber for even one instance of infringement.

Proper notice of infringement shall include the following information in writing to Namecheap's designated agent:

- the electronic or physical signature of the rights holder or the person authorized to act on behalf of that person;
- identification of the work that has been infringed;
- an identification of the material that is claimed to be infringing, and information reasonably sufficient to permit Namecheap to locate the material (for example, by providing a URL to the material); or, if applicable, identification of the reference or link to material or activity claimed

to be infringing, and information reasonably sufficient to permit Namecheap to locate that reference or link;

- Your name, address, telephone number, and email address;
- a statement by You that You have a good faith belief that the disputed use is not authorized by the rights holder, its agent, or the law; and
- a statement that the information in Your notification is accurate and a statement, made under penalty of perjury, that You are the rights holder or are authorized to act on the behalf of the rights holder.

Notice of infringement must be sent to Namecheap's designated agent to receive notification of claimed infringement as follows: Attn: Legal Department, Namecheap, 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, facsimile: (310)-312-9513.

## 19. Additional Reservation of Rights

Namecheap expressly reserves the right to deny, cancel, terminate, suspend, lock, or modify access to (or control of) any account or any Services (including the right to cancel or transfer any domain name registration) for any reason (as determined by Namecheap in its sole and absolute discretion), including but not limited to the following: (i) to correct mistakes made by Namecheap in offering or delivering any Services (including any domain name registration); (ii) to protect the integrity and stability of, and correct mistakes made by, any domain name registry; (iii) to assist with our fraud and abuse detection and prevention efforts; (iv) to comply with applicable local, state, national and international laws, rules and regulations; (v) to comply with requests of law enforcement, including subpoena requests; (vi) to comply with any dispute resolution process; (vii) to defend any legal action or threatened legal action without consideration for whether such legal action or threatened legal action is eventually determined to be with or without merit, or (viii) to avoid any civil or criminal liability on the part of Namecheap, its officers, directors, employees and agents, as well as Namecheap's affiliates.

In the event that Namecheap need exercise any of its rights expressed herein to investigate any potential breach or violation of the terms and conditions of this Agreement, service fees may continue to accrue on your accounts, and you will continue to remain responsible for the payment of any service fees that accrue during the relevant period.

## 20. Governing Law and Jurisdiction for Disputes

Except as otherwise set forth in the UDRP or any similar policy with respect to any dispute regarding the Services provided under this Agreement, Your rights and obligations and all actions contemplated by this Agreement shall be governed by the laws of the United States of America and the State of California. You agree that any action to enforce this agreement or any matter relating to Your use of the Services must be brought exclusively in the United States



District Court for the Central District of California, or if there is no jurisdiction in such court, then in a state court in Los Angeles County, State of California.

## 21. Notices

You agree that any notices required to be given under this Agreement by Us to You will be deemed to have been given if delivered in accordance with the account and/or domain name Whois information You have provided. You acknowledge that it is Your responsibility to maintain current contact information in the account and/or domain name Whois information You have provided.

## 22. Legal Age

You attest that you are of legal age (18 or over) to enter into this Agreement.

## 23. Final Agreement

This Agreement, together with all modifications, constitutes the complete and exclusive agreement between You and Us, and supersede and govern all prior proposals, agreements, or other communications. This Agreement may not be amended or modified by You except by means of a written document signed by both You and an authorized representative of Us. By applying for Namecheap's services through the online application process or otherwise, or by using the Services under this Agreement, you acknowledge that you have read and agree to be bound by all terms and conditions of this Agreement and documents incorporated by reference.

## 24. No Agency Relationship

Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties hereto. Each party shall ensure that the foregoing persons shall not represent to the contrary, either expressly, implicitly, by appearance or otherwise.

## 25. Enforceability

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. We will amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, our original objectives and intent as reflected in the original provision.

## 26. Assignment and Resale

Except as otherwise set forth herein, Your rights under this Agreement are not assignable or transferable. Any attempt by Your creditors to obtain an interest in Your rights under this Agreement, whether by attachment, levy, garnishment or otherwise, renders this Agreement voidable at Our option. You agree not to reproduce, duplicate, copy, sell, resell or otherwise exploit for any commercial purposes any of the Services (or portion thereof) without Namecheap's prior express written consent.

## 27. Force Majeure

Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its control including, but not limited to: earthquake; flood; fire; storm; natural disaster; act of God; war; terrorism; armed conflict; labor strike; lockout; boycott; supplier failures, shortages, breaches, or delays; or any law, order regulation, direction, action or request of the government, including any federal, state and local governments having or claiming jurisdiction over Namecheap, or of any department, agency, commission, bureau, corporation or other instrumentality of any federal, state, or local government, or of any civil or military authority; or any other cause or circumstance, whether of a similar or dissimilar nature to the foregoing, beyond the reasonable control of the affected party, provided that the party relying upon this section (i) shall have given the other party written notice thereof promptly and, in any event, within five (5) days of discovery thereof and (ii) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based; provided further, that in the event a force majeure event described in this Section extends for a period in excess of thirty (30) days in the aggregate, Namecheap may immediately terminate this Agreement.

## 28. Headings

The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

### **Hosting Terms of Service**

### **Hosting Acceptable Use Policy**

### **Hosting Privacy Policy**

### **Hosting Uptime Guarantee**

### **Private Email Terms of Service**



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**Need help?**  
We're always here for you.

Chat with a Live Person

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*Serving customers since 2001.*

Payment Options

